CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(14)

O.A.No.2790/2001
MA No.1639/2002

New Delhi, this the 9th day of January, 2003.

Hon'ble Shri Govindan S. Tampi, Member(Admnv.)
Hon'ble Shri Shanker Raju, Member (Judicial)

1. Krishan Kumar
   S/o Shri Beg Raj Sharma
   R/o Village & PO Datauli
   PS Gannaur
   Distt. Sonepat
   (Haryana)

2. Ganga Ram (2068/NW)
   S/o Shri Shiv Pal Ram
   R/o Police Station Narela,
   Delhi.

-APPLICANTS

(By Advocate: Shri Shyam Babu)

-Versus-

1. Govt. of NCT of Delhi
   through Chief Secretary
   Delhi Sachivalaya,
   I.P.Estate,
   New Delhi.

2. Joint Commissioner of Police
   Northern Range,
   Police Headquarters,
   I.P.Estate,
   New Delhi.

-RESPONDENTS

(By Advocate Shri George Paracken)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

MA for joining together is allowed. Applicants impugn a common order of disciplinary authority dated 20.12.2000, imposing upon them a punishment of permanent forfeiture of five years' approved service with cumulative effect as well as the appellate order dated 13.6.2001, upholding the punishment.

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2. Earlier this OA has been allowed by an order dated 12.10.2001 on the issue of incompetence of the Joint Commissioner to act as an appellate authority, but has been remanded back by the High Court of Delhi in CWP No.2679/2001 by an order dated 27.5.2002 for fresh disposal on merits.

3. Applicants while posted at Adarsh Nagar Police Station have been placed under suspension on 13.8.99 and were ordered to be dealt with departmentally. A summary of allegation was served upon them alleging their connivance with accused Rakesh Kumar who was found manufacturing duplicate soft drinks, resulting in registration of a case FIR No.409/99 under Section 420/469 IPC and 63 of Copy Right Act against the accused. It is alleged that the manufacturing was done with the knowledge of applicants who were beat officers and they have taken Rs.7,000/- from the accused to allow him to manufacture spurious cold drinks. After recording statements of 4 PWs a charge has been framed against applicants, which is reproduced as under:

> "I, R.K. Meena, Inspector DE Cell/E.O. charge you Const. Ganga Ram No.2068/NW and Const. Krishan Kumar No.2136/NW that during the course of investigation on case FIR No.401/99, dated 2.8.99, u/s 420/468 IPC and 63 copy right Act, PS Adarsh Nagar, in which one Rakesh Kumar was arrested by S.I. Banwari Lal alongwith the staff raided at Premises No.E-20, Dairy Road, Adarsh Nagar, Extension, where Rakesh Kumar, S/o Mahinder Parsad R/o E-185, M.C.D. Colony, Azad Pur, Delhi was found

manufacturing duplicate and spurious soft drinks like Coca Cola, Limca, Pepsi, Mirinda etc.

During the course of interrogation, accused Rakesh Kumar disclosed that he had been manufacturing these soft drinks with the knowledge of both of you as your were the beat officers of the said Beat while posted at PS Adarsh Nagar Delhi.

The above act on your part amounts to gross misconduct, indulging in corrupt practices and dereliction in the discharge of your official duty for which you are liable for punishment under Section 21 of Delhi Police Act, 1978 readwith Delhi Police (Punishment and Appeal) Rules, 1980."

4. Applicants submitted their defence statements and the Enquiry Officer (EO) by the following observations held the charge partly proved:

"DISCUSSION

From the above it is clear that Const. Krishan Kumar No.2136/NW and Const. Ganga Ram No.2068/NW were posted in beat No.11, including Adarsh Nagar Extension etc. upto 31.7.1999 as stated by PW-3. On 1.8.99 Const. Ganga Ram was detailed in beat No.8 whereas Const. Krishan Kumar No.2136/NW continued in the same beat. It was on 2.8.99 that a raid was conducted by SI Banwari Lal in the premises of E-20, Dairy Road, Adarsh Nagar Extension and arrested one Rakesh Kumar, S/o Mahender Parsad for manufacturing duplicate soft drinks under various brands like Coca Cola, Limca, Pepsi, Mirinda etc. A case vide FIR No.401/99 u/s 420/468 IPC PS Adarsh Nagar was registered. The accused Rakesh had accepted having given Rs.7,000/- to both the defaulters in his statement recorded by the then SHO/Adarsh Nagar on 2.8.99 but the same was rebutted by the accused during DE proceedings and denied of having any contacts with the defaulters.

The first contention of the defaulters has already explained above. It is true that PW Rakesh has never admitted of giving money to the defaulter for manufacturing the duplicate soft drinks.

The second point raised by the defaulters of collective responsibility does not bear any resemblance as criminal liability is individual.

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disciplinary authority without disagreeing with the findings of the EO and adopting the proper procedure laid down under Rule 16 (xii) held applicants guilty of the charge of connivance with the accused shows that the order is based on suspicion and surmises and is not legally sustainable.

7. On the other hand, respondents' counsel Shri George Paracken, vehemently opposed the contentions of applicants and fairly conceded the multiplicity of the punishment which is contrary to Rule 8 (d) (ii) of the Rules as held by the High Court of Delhi in Shakti Singh's case (supra). On the ground of non-speaking findings it is contended that the EO has dealt with the defence of applicants and other evidence although he has dissected the charge but although the charge of acceptance of money was not proved but as it has been proved that applicants being the beat officers in the same area where spurious drinks were being manufactured they are guilty of the charge and have been accordingly awarded punishment by the disciplinary authority. As such no disagreement is arrived at for which a reasonable opportunity could be afforded to applicants. Moreover, it is stated that no procedural illegality has been committed during the course of the enquiry which could warrant interference of this court.

8. We have carefully considered the rival contentions of the parties and perused the material on record.

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9. The penalty imposed upon applicants is liable to be set aside as far as latter part is concerned, having multiple in nature and contrary to Rule 8 (d) (ii) of the Delhi Police (Punishment & Appeal) Rules, 1980. The aforesaid punishment is also declared ultra vires by the High Court of Delhi in CWP No.2368/2000. This decision is also not disputed by the learned counsel for the respondents.

10. In the light of the provisions of Rule 16 (ix) of Delhi Police (Punishment & Appeal) Rules, 1980 while recording the finding the EO shall have to record finding on each article of charge together with the reasons. It is trite law that the findings of the EO should not be vague, inconclusive, indefinite or non-speaking one. The requirement is paramount as if the disciplinary authority disagrees with the finding there is no requirement to record reasons therefor. If the finding does not indicate that how the evidence of the prosecution has been weighed more, as compared to the evidence of the defence material of the delinquent official and though there is no evaluation of evidence as well as definite finding to the proof of guilt the same is not legally sustainable in the light of the decision of the Apex Court in Anil Kumar v. Presiding Officer & Others, 1985 SCC (L&S) 815 wherein it has been held that:

> "The enquiry officer in the present case merely recorded his ipse dixit that the charges were proved, without assigning any reason why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. Therefore, there was no enquiry in this case worth the name and the order of

termination based on such proceeding disclosing non-application of mind would be unsustainable.

A disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the repot must be a reasoned one. It cannot be an ipse dixit of the enquiry officer. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and non correlation is established between the two showing application of mind, it is not an enquiry report at all."

11. In the light of the aforesaid law laid down by the Apex Court on examination of the finding recorded by the EO, we find that the charge framed against applicants after examination of prosecution evidence is that on interrogation in the criminal case it has been disclosed by the accused that applicants had knowledge of manufacturing spurious soft drinks by the accused while working at the said beat. Allegation regarding payment of money was not included as part of charge, as alleged in the summary of allegation.

12. What has been done by the EO in the discussion is to reproduce the summary of allegation and rebuttal of applicants as to charge of receipt of money. Thereafter he proceeded to negate three contentions put-forth by applicants. After this stage, instead of recording reasons as to how the guilt of applicants has been established in the light of evidence produced by the prosecution. A bald

statement that the charge is partly proved has been recorded without being supported by any reasons. If the charge was only of knowledge pertaining to manufacturing of spurious cold drinks that cannot be dissected as to prove it partly as this does not lead to conclude which part of the charge alleged is proved and the remaining is not proved. A single charge cannot be dissected. Either the knowledge is to be derived or to be proved or to be negated. There is nothing in the finding to indicate that the charge of knowledge of applicants had been established or the question of their connivance with the accused has been established from any angle on the basis of the evidence recorded in the enquiry. This conclusion is absolutely abrupt, vague, indefinite and does not conform to Rule 16 (ix) of the Rules. Non-recording of reasons by the EO is certainly a violation of procedural rules, which has greatly prejudiced applicants, as they could not effectively defend the finding before the punishment was imposed by the disciplinary authority. Such a finding cannot be accepted from a senior officer of the rank of Inspector and more particularly when the enquiry has been conducted in a specialised section of Delhi Police, i.e., Departmental Enquiry Cell which has been constituted only to deal with the enquiry of police officers involving vigilance angle. The aforesaid finding is also an anti thesis to the law laid down by the Apex Court in Anil Kumar's case (supra).

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13. We also find that despite the charge has not been proved and definitely concluded against applicants, the disciplinary authority while issuing finding to applicants to make representation has not indicated any disagreement but in the order passed what has been stated that applicants' connivance was disclosed during the interrogation and their failure to control the illegal activities in the area which is not a part of the charge alleged against applicants. This shows that the extreme matter has been taken into consideration by the disciplinary authority to inflict punishment upon them.

14. Moreover, as held by the Constitutional Bench the EO has not proved the charge against applicant of their knowledge of manufacturing of spurious cold drinks by the accused but yet the disciplinary authority disagreed with the finding of the EO and concluded that applicants connivance cannot be ruled out, which cannot be resorted to without recording tentative reasons and affording a reasonable opportunity to applicants in consonance with Rule 16 (xii) of the Rules and such an action would not be sustainable in the light of the decision of the Constitutional Bench in Punjab National Bank & Others v. Kuni Behari Misra, JT 1998 (5) SC 548 and Yogi Nath D. Bagde v. State of Maharashtra, (1997) 7 SCC 739.

15. In this view of the matter and in the light of the discussion made above the orders passed by the respondents cannot be sustained. The OA is accordingly allowed. Impugned orders are quashed and set aside. Applicants shall be entitled to all consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

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